


IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT : M'RABET et al. EXAMINER : TBA  
SERIAL NO. : 10/583,171 ART UNIT : TBA  
FILED: June 14, 2006 CONFIRM NO.: 2577  
FOR: LACTIC ACID PRODUCING  
BACTERIA AND LUNG FUNCTION



April 29, 2009

STATEMENT OF FILING BY EXPRESS MAIL 37 CFR § 1.10

This correspondence is being deposited with the U.S. Postal Service on:  
April 29, 2009 in an envelope as "Express Mail Post Office to Addressee"  
Mailing Label No.: EB 908 955 167 US addressed to: Commissioner for  
Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

RESPONSE TO NOTIFICATION OF MISSING REQUIREMENTS  
UNDER 35 USC § 371  
REQUEST FOR REFUND OF ADDITIONAL  
FEES CHARGED BY USPTO

Mail Stop - Missing Parts  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**REMARKS**

In response to the Notification of Missing Requirements under 35 USC § 371 of February 23, 2009, Applicants submit a properly executed Declaration/Power of Attorney and a check in the amount of \$1,154.00 to cover the \$130.00 surcharge for the submission of the Declaration by a large entity, and \$1,024.00 for five (5) independent claims over the maximum three (3) and seven (7) total claims over the maximum 20.

It is respectfully submitted that based upon the Preliminary Amendment submitted on 14 June 2006, contemporaneous with the filing of the application, the number of independent claims in the application was five (5) and the total number of claims amounted to twenty (20). None of the claims filed were in multiple dependent form.

Accordingly, the fee of \$1,300.00 which accompanied the application, included \$400.00 for two (2) independent claims beyond the maximum of three (3) independent claims is correct. The calculation by the USPTO of \$1,024.00, in addition, is incorrect.

If Applicants are found to be correct in their calculation, please credit our Deposit Account No. 01-0035 in the amount of \$1,024.00.

Applicants enclose herewith a diskette of the "Sequence Listing" in computer readable form (CRF) and a paper version of the sequence listing, the CRF and the paper listing being identical.

It is respectfully submitted that Applicants have attended to all the issues raised by the Notification of February 23, 2009.

05/01/2009 GFREY1 00000043 10583171

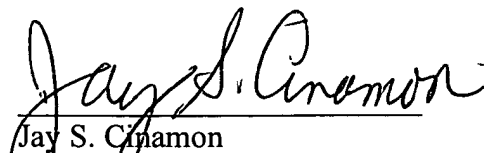
01 FC:1617	130.00 OP
02 FC:1615	364.00 OP
03 FC:1614	660.00 OP

Please charge any other fees which may be due and which have not been submitted herewith to our Deposit Account No. 01-0035.

Respectfully submitted,

ABELMAN, FRAYNE & SCHWAB  
Attorneys for Applicant

By

  
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# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
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U.S. APPLICATION NUMBER NO.	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
10/583,171	Laura M'Rabet	207,645

Jay S Cinamon  
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New York, NY 10017-5621

INTERNATIONAL APPLICATION NO.	
PCT/NL04/00874	
I.A. FILING DATE	PRIORITY DATE
12/16/2004	12/17/2003

**CONFIRMATION NO. 2577**  
**371 FORMALITIES LETTER**



Date Mailed: 02/23/2009

## NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)

The following items have been submitted by the applicant or the IB to the United States Patent and Trademark Office as an Elected Office (37 CFR 1.495):

- Priority Document
- Copy of the International Application filed on 06/15/2006
- Copy of the International Search Report filed on 06/15/2006
- Preliminary Amendments filed on 06/15/2006
- Information Disclosure Statements filed on 12/15/2006
- Oath or Declaration filed on 06/15/2006
- Biochemical Sequence Listing filed on 06/15/2006
- Request for Immediate Examination filed on 06/15/2006
- U.S. Basic National Fees filed on 06/15/2006
- Specification filed on 06/15/2006
- Claims filed on 06/15/2006
- Abstracts filed on 06/15/2006

The applicant needs to satisfy supplemental fees problems indicated below.

The following items **MUST** be furnished within the period set forth below in order to complete the requirements for acceptance under 35 U.S.C. 371:

- Additional claim fees of **\$1024** as a non-small entity, including any required multiple dependent claim fee, are required. Applicant must submit the additional claim fees or cancel the additional claims for which fees are due.
- Oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date. The current oath or declaration does not comply with 37 CFR 1.497(a) and (b) in that it:
  - is not executed in accordance with either 37 CFR 1.66 or 37 CFR 1.68.
- To avoid abandonment, a surcharge (for late submission of filing fee, search fee, examination fee or oath or declaration) as set forth in 37 CFR 1.492(h) of \$130 for a non-small entity, must be submitted with the missing items identified in this letter.

### SUMMARY OF FEES DUE:

Total additional fees required for this application is **\$1154** for a Large Entity:

- **\$130** Surcharge.

- This application does not contain a statement that the content of the sequence listing information recorded in computer readable form is identical to the written (on paper or compact disc) sequence listing and, where applicable, includes no new matter, as required by 37 CFR 1.821(e), 1.821(f), 1.821(g), 1.825(b), or 1.825(d). Applicant must provide such statement. If the effective filing date is on or after September 8, 2000, see the final rulemaking notice published in the Federal Register at 65 FR 54604 (September 8, 2000) and 1238 OG 145 (September 19, 2000).
- A copy of the "Sequence Listing" in computer readable form has not been submitted as required by 37 CFR 1.821(e). If the effective filing date is on or after September 8, 2000, see the final rulemaking notice published in the Federal Register at 65 FR 54604 (September 8, 2000) and 1238 OG 145 (September 19, 2000). Applicant must provide an initial computer readable form (CRF) copy of the "Sequence Listing" and a statement that the content of the sequence listing information recorded in computer readable form is identical to the written (on paper or compact disc) sequence listing and, where applicable, includes no new matter, as required by 37 CFR 1.821(e), 1.821(f), 1.821(g), 1.825(b), or 1.825(d). If applicant desires the sequence listing in the instant application to be identical with that of another application on file in the U.S. Patent and Trademark Office, such request in accordance with 37 CFR 1.821(e) may be submitted in lieu of a new CRF.

Total additional claim fee(s) for this application is **\$1024**

- **\$660** for 5 independent claims over 3.
- **\$364** for 7 total claims over 20.

Applicant is cautioned that correction of the above items may cause the specification and drawings page count to exceed 100 pages. If the specification and drawings exceed 100 pages, applicant will need to submit the required application size fee.

**For questions regarding compliance to 37 CFR 1.821-1.825 requirements, please contact:**

- For Rules Interpretation, call (571) 272-0951
- For Patentin Software Program Help, call Patent EBC at 1-866-217-9197 or directly at 703-305-3028 / 703-308-6845 between the hours of 6 a.m. and 12 midnight, Monday through Friday, EST.
- Send e-mail correspondence for Patentin Software Program Help @ [ebc@uspto.gov](mailto:ebc@uspto.gov)

**ALL OF THE ITEMS SET FORTH ABOVE MUST BE SUBMITTED WITHIN TWO (2) MONTHS FROM THE DATE OF THIS NOTICE OR BY 32 MONTHS FROM THE PRIORITY DATE FOR THE APPLICATION, WHICHEVER IS LATER. FAILURE TO PROPERLY RESPOND WILL RESULT IN ABANDONMENT.**

The time period set above may be extended by filing a petition and fee for extension of time under the provisions of 37 CFR 1.136(a).

Applicant is reminded that any communications to the United States Patent and Trademark Office must be mailed to the address given in the heading and include the U.S. application no. shown above (37 CFR 1.5)

Registered users of EFS-Web may alternatively submit their reply to this notice via EFS-Web.

<https://portal.uspto.gov/authenticate/AuthenticateUserLocalEPF.html>

For more information about EFS-Web please call the USPTO Electronic Business Center at 1-866-217-9197 or visit our website at <http://www.uspto.gov/ebc>.

**If you are not using EFS-Web to submit your reply, you must include a copy of this notice.**

FREDERICK SMITH

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